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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 MUHAMMED TILLISY,

11 Plaintiff,

12 v.

13 DEPARTMENT OF CORRECTIONS,
14 et al.,

15 Defendants.

CASE NO. 3:18-cv-05695-RJB-JRC

ORDER DENYING MOTION FOR
APPOINTMENT COUNSEL

16 The District Court has referred this 42 U.S.C. § 1983 action to United States Magistrate
17 Judge J. Richard Creatura. Currently pending in this action is plaintiff Muhammed Tillisy's
18 motion for appointment of counsel. Dkt. 9.

19 Although indigent defendants in criminal cases are entitled to appointed counsel, there is
20 no constitutional right to appointed counsel in a § 1983 civil action. *Storseth v. Spellman*, 654
21 F.2d 1349, 1353 (9th Cir. 1981); *see United States v. \$292,888.04 in U.S. Currency*, 54 F.3d 564,
22 569 (9th Cir. 1995) (“[a]ppointment of counsel under this section is discretionary, not
23 mandatory”). However, in “exceptional circumstances,” a district court may appoint counsel for
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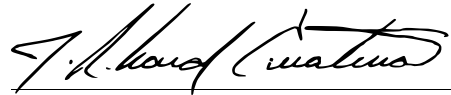
1 indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1) (formerly 28 U.S.C. § 1915(d)). *Rand*
2 *v. Roland*, 113F.3d 1520, 1525 (9th Cir. 1997), *overruled on other grounds*, 154 F.3d 952 (9th
3 Cir. 1998). To decide whether exceptional circumstances exist, the Court must evaluate both “the
4 likelihood of success on the merits [and] the ability of the [plaintiff] to articulate his claims *pro*
5 *se* in light of the complexity of the legal issues involved.” *Wilborn v. Escalderon*, 789 F.2d 1328,
6 1331 (9th Cir. 1986) (quoting *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)). A plaintiff
7 must plead facts showing he has an insufficient grasp of his case or the legal issues involved and
8 an inadequate ability to articulate the factual basis of his claims. *Agyeman v. Corrections Corp.*
9 *of America*, 390 F.3d 1101, 1103 (9th Cir. 2004).

10 Here, plaintiff has failed to show the exceptional circumstances necessary to warrant
11 appointment of counsel. Plaintiff has only stated that he has tried to obtain pro bono counsel
12 from several law firms – but the inability to retain counsel is not relevant to whether the court
13 will appoint counsel in this case. Dkt. 9. In addition, the Court is still awaiting plaintiff’s
14 amended complaint. *See* Dkt. 11. In the Court’s order to show cause or amend, the Court noted
15 that, although plaintiff had failed to state a claim as to some of his allegations, he had also
16 successfully stated a claim as to others. *Id.* Indeed, the deficiencies the Court identified in
17 plaintiff’s original complaint are easily remedied and the Court is confident that plaintiff will be
18 able to adequately articulate his claims in his amended complaint. Further, it is still extremely
19 early in the case. Plaintiff has not yet filed an amended complaint and the defendants have not
20 yet been served. *See* Dkt. Because it is so early in the case, the Court cannot yet determine
21 plaintiff’s likelihood of success on the merits.

22 Therefore, for the reasons stated above, plaintiff’s motion for appointment of counsel
23 (Dkt. 9) is denied without prejudice. Plaintiff may file a new motion for appointment of counsel
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1 once the case has further developed if he is then able to demonstrate the exceptional
2 circumstances necessary to warrant appointment of counsel.

3 Dated this 1st day of November, 2018.

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7 J. Richard Creatura
8 United States Magistrate Judge
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